

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	No. 19-cr-10459-RWZ-23
)	
ANGEL CALDERON)	

DEFENDANT’S MEMORANDUM IN SUPPORT OF
MOTION FOR PRETRIAL RELEASE

Defendant Angel Calderon (“Mr. Calderon”) respectfully submits this memorandum in support of his motion for pretrial release pursuant to 18 U.S.C. § 3142. ECF. No. 759. Contrary to assertions made by the government in response¹ to Mr. Calderon’s motion for release, there is no “clear and convincing evidence” that Mr. Calderon “poses a danger to the community,” nor does he “poses a flight risk” by a preponderance of the evidence. See *United States v. Rose*, 2012 WL 2500497, *1 (D. Mass. 2012) (Gorton, J.). For the reasons stated herein, the Court should release Mr. Calderon to live with his longtime girlfriend² in Dorchester; further, he agrees to submit to any reasonable conditions of release, including but not limited to home confinement.

1. The Alleged Offenses

The following is a non-exhaustive pre-trial consideration of the alleged offenses for the purposes of responding to the government’s opposition to Mr. Calderon’s release. It is not an admission or concession to any facts allege, nor is it offered as a complete or nearly complete defense.

The government spends significant effort to suggest that Mr. Calderon was planning to murder codefendant Angel Roldan (“Mr. Roldan”). But the government essentially ignores

¹ See ECF No. 823 (“opposition”).

² Pretrial Services has already interviewed Mr. Calderon’s girlfriend and verified information relevant to Mr. Calderon’s release with her. Her name, address, and phone number are known to Pretrial Services. See Pretrial Services Report.

significant evidence to the contrary. For example, in ¶168 of the Affidavit of Special Agent David Coppo (“Coppo Aff.”), the government concedes that codefendant Michael Cecchetelli (“Mr. Cecchetelli”), the alleged Supreme East Coast Regional Overseer of the Latin Kings³, declared there was no plan to murder Mr. Roldan:

During this exchange, CECCHETELLI attempts to minimize the significance of the order issued by LIBERATO, by claiming that there was no kill order, but does acknowledge there would have been gunfire (“There was never any kill type shit, there was never anything like that. They were talking about um, V having brothers pop off.”).

Coppo Aff. at ¶168. While broadly referring the Court to ¶¶161-172 of the affidavit to discuss these events generally, see opposition at 3, the government fails to acknowledge this vital clarification from the alleged regional leader that no murder was ever planned. Further, even the July 30, 2019 recording of Mr. Cecchetelli discussing how “Bam is on a bracelet” evinces skepticism of a plot against Mr. Roldan that would actually involve Mr. Calderon.⁴

Further, the government reveals a pattern of characterizing Mr. Calderon’s mere alleged words as his true actions or intended actions, unduly stretching verbal expressions into concrete realities. For instance, statements attributed to Mr. Calderon regarding Mr. Roldan⁵ are interpreted by the government as statements of actual intent and expected follow through as opposed to young men blustering and exaggerating for effect. The government is wedded to the idea that the statements regarding Mr. Roldan’s were real threats because FBI informants took the step of informing Mr. Roldan regarding the statements.⁶ They cannot go back now. Yet while crude to the ear, the idea that anybody was going to kill Mr. Roldan in front of “your grandmother,” as

³ Coppo Aff. at ¶ 24

⁴ See Opposition at 4-5.

⁵ See e.g. *February 23, 2019 recordings* at Ex. 18.

⁶ See Opposition at 4.

stated in the recording, has the clear ring of hyperbole and false bravado, which extend to the substantive “threat” itself.⁷ The same can be said for many other statements of purported intent which, importantly, do not result in the acts actually occurring.

Further, the government cites Mr. Calderon’s alleged participation in one-minute “violation” assaults on Latin King members.⁸ While surely physical in nature, these purported measures amongst alleged friends and associates did not result in serious injury. Indeed, it is the undersigned’s understanding that an “alleged victim” of one such “violation” is presently housed with Mr. Calderon at Wyatt Detention Facility (“Wyatt”); clearly, nobody mindful of inmate security, including the government, believes there is any actual or persisting issues between these young men. Indeed, Mr. Calderon is not alleged to have committed any act charged in the indictment leading to remotely serious physical injury.

Finally, the government discusses Mr. Calderon’s alleged association with firearms, yet here too there are clear overstatements. While allegedly present with several others during a discussion of an existent MP5 on September 26, 2019, for instance, the evidence is far from “clear and convincing” that Mr. Calderon participated in a sale of that gun. First, in the video, he is alleged to have questioned others whether the weapon was even loaded. He clearly does not have a proprietary stake in the firearm if he does not know whether it is loaded. Second, he allegedly discourages persons from shooting the firearm in the basement of the home. This is clearly not a sale to him if he discourages its test use. Third, there is no evidence identified by the government that he profited from any sale. In a scenario where several other persons were demonstrably present and far more engaged in the discussion than Mr. Calderon, it is an exaggeration to conclude, particularly by “clear and convincing evidence,” that Mr. Calderon “sold” that gun.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

In deciding whether to deprive somebody of their liberty while presumed innocent of the crime charged based on alleged dangerousness, the evidence must indeed be “clear and convincing.” The instant evidence falls short of that important and binding standard.

2. Mr. Calderon does not pose a risk of flight

There is little to no evidence that Mr. Calderon poses a risk of flight. Practically his entire life is in the area of Boston, MA. His girlfriend lives in Boston. His family, including his mother and sister with whom he is very close, live in and around Boston. While he has had warrants in the past, there is no demonstration those warrants were the result of defaults in court appearances. The defense also disputes the government’s calculation of Mr. Calderon’s sentencing guidelines at this stage, particularly though perhaps not exclusively the claim that he conspired to murder.

Yesterday, April 29, 2020, defense counsel learned that Mr. Calderon’s mother has contracted COVID-19. See Declaration of David J. Grimaldi, attached at Ex. A. According to Mr. Calderon’s sister Anairys Calderon (for clarity, “Anairys”), their mother Nora Hernandez (née Pica) (“Ms. Hernandez”) of Dorchester received her positive diagnosis on April 28th from Atrius Health in Kenmore Square, Boston. Ms. Hernandez has longstanding health issues, including Diabetes (type 2), asthma, hypertension, hyperthyroidism, and related heart conditions. *Id.* Her preexisting health issues may expose her to greater risk of serious illness or worse from COVID-19. According to Anairys, Ms. Hernandez is already exhibiting symptoms of COVID-19, including difficulty breathing. *Id.* While home right now, arrangements are in process for our mother to be treated inpatient at Beth Israel Deaconess Medical Center. *Id.*

This is a clearly a very challenging time for Mr. Calderon’s family. While for his own safety Mr. Calderon cannot be with his mother while she is COVID-19 positive, Anairys and others do wish to visit with him for support, even if while “social distancing,” something they cannot

currently do at Wyatt. Ms. Hernandez's contraction of the virus and need to be supportive of his family is yet further assurance that Mr. Calderon is not a risk of flight.

3. The COVID-19 Crisis in Wyatt Detention Facility

The novel coronavirus that causes COVID-19 has led to a global pandemic. As of April 27, 2020 there were more than 2,981,592 confirmed COVID-19 cases throughout the world and more than 965,933 confirmed cases in the United States.⁹ The COVID-19 death toll has risen to 206,803 worldwide¹⁰ and to over 50,000 in the United States alone.¹¹ In Massachusetts, as of April 25th the total number of confirmed cases was 54,938 and total number of deaths had increased to 2,899.¹² Projections range from 100,000 to 200,000 deaths in the United States in the best case scenario, to as many as 1.5 million deaths in the most severe scenario.¹³

On March 11, 2020 the World Health Organization officially classified COVID-19 as a global pandemic.¹⁴ President Trump declared a national emergency to address the pandemic.¹⁵ Governor Baker also declared a state of emergency in Massachusetts, and has issued at least 45 emergency orders.¹⁶ Those orders include closing all non-essential businesses, closing all elementary and secondary schools, prohibiting on-site consumption of food and beverages,

⁹ Center for Systems Science and Engineering at Johns Hopkins University, *Coronavirus COVID-19 Global Cases Dashboard*, <https://coronavirus.jhu.edu/map.html> (last accessed Apr. 27, 2020)

¹⁰ *Id.*

¹¹ *U.S. Coronavirus Death Toll Passes 50,000*, NPR (April 24, 2020) <https://www.npr.org/sections/coronavirus-live-updates/2020/04/24/844039508/u-s-coronavirus-death-toll-passes-50-000> (last accessed Apr. 27, 2020)

¹² *The Latest Coronavirus Numbers from Massachusetts*, The Boston Globe, <https://www.bostonglobe.com/2020/03/10/nation/latest-coronavirus-numbers-massachusetts/> (last accessed Apr. 25, 2020)

¹³ *Dr. Deborah Birx Predicts Up to 200,000 Death "If We Do things Almost Perfectly,"* NBC News (Mar. 30, 2020) <https://www.nbcnews.com/news/us-news/dr-deborah-birx-predicts-200-000-deaths-if-we-do-n1171876>; Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, New York Times (Mar. 13, 2020) <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html> (last accessed April 24, 2020)

¹⁴ *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (Mar. 11, 2020), <https://bit.ly/2W8dwpS> (last accessed Apr. 24, 2020).

¹⁵ Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Conference (March 13, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-conference-3/>.

¹⁶ *COVID-19 State of Emergency*, <https://www.mass.gov/info-details/covid-19-state-of-emergency> (last accessed Apr. 24, 2020).

restricting visitor access to nursing homes, and prohibiting public gatherings of 10 or more people throughout the Commonwealth.¹⁷ The Massachusetts Supreme Judicial Court has closed all Massachusetts courthouses to the public except to conduct emergency hearings that cannot be conducted by teleconference.¹⁸ For its part, this Court has issued fifteen General Orders relative to COVID-19, including continuing all jury trials and grand jury proceedings until May 29, 2020 (General Orders 20-13, 20-14). At the time of this drafting, at least 316 million people in at least 42 states, three counties, and 10 cities are being urged or ordered to “stay home.”¹⁹

The federal, state, and local governments have virtually all required or recommended measures that deter congregations of people and encourage “social distancing” to slow the spread of the highly contagious virus. The Centers for Disease Control and Prevention (“CDC”) advise that the virus passes between people who are within six feet of one another through respiratory droplets and by contact with surfaces.²⁰ COVID-19 may remain on surfaces for up to three days.²¹ As many as 25 percent of people infected with COVID-19 may not show symptoms, leading them to unwittingly spread the disease to others.²² Social distancing, proper hygiene, frequent cleaning of all surfaces, and frequent and thorough hand washing are all crucial to combatting transmission. On April 3, 2020, the CDC even recommended that all people in the United States wear masks

¹⁷ *Id.*

¹⁸ Supreme Judicial Court Order regarding court operations under the exigent circumstances created by the COVID-19 (coronavirus) pandemic (April 1, 2020), <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-order-regarding-court-operations-under-the> (last accessed Apr. 24, 2020).

¹⁹ Sarah Mervosh, Denise Lu & Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, The New York Times (Apr. 3, 2020), available at <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html> (last accessed Apr. 27, 2020).

²⁰ *How to Protect Yourself & Others*, Center for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last accessed April 24, 2020)

²¹ Neelje van Doremalen, et. al., *Aerosol and Surface Stability of SARS-CoV2 as Compared with SARS-COV-1*, New England Journal of Medicine (Mar. 17, 2020). (“SARS-CoV- 2 was more stable on plastic and stainless steel than on copper and cardboard, and viable virus was detected up to 72 hours after application to these surfaces”), available at <https://www.nejm.org/doi/10.1056/NEJMc2004973>.

²² Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, The New York Times (Mar. 31, 2020), available at <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatictransmission.html>.

when leaving their homes.²³ The COVID-19 crisis is unprecedented in modern times and extraordinary measures are necessary to protect the nation's citizens.

4. COVID-19 Presents An Increased Threat to Vulnerable Inmates at Wyatt

Mr. Calderon is personally and uniquely vulnerable to COVID-19. Contrary to the government's claims²⁴, his medical records do reveal increased risks to the deadly virus, including asthma²⁵ and chronic obesity.²⁶ His obesity has been a particularly severe problem, and includes gynecomastia as a contributing factor which resulted in a mastectomy.²⁷ New studies demonstrate the risk that obese persons face against COVID-19, particularly young obese persons.²⁸ The government's anti-scientific conclusions about the risks Mr. Calderon faces should not be countenanced.

Further, COVID-19 is present and spreading at Wyatt. As of 9:00 pm yesterday, April 29, 2020, Kevin Neal of the U.S. Marshal Service ("USMS") reported that 9 detainees at Wyatt have tested positive, including 7 in USMS custody. See *Email Correspondence of Kevin Neal, USMS*, attached at Ex. B. As the contagious virus spreads through the facility, Mr. Calderon is at increasing risk of serious illness or worse.

²³ Centers for Disease Control and Prevention, *Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission* (Apr. 3, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

²⁴ See *Opposition* at 12.

²⁵ See e.g. *Carney Hospital Records*, Ex. 20 at 22. Both the World Health Organization and the Centers for Disease Control report that people with chronic respiratory disease are at greater risk from COVID-19. See World Health Organization Coronavirus Disease 2019 (COVID-19) Situation Report 51, available at <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf>, and Centers for Disease Control and Prevention, *People at Risk for Serious Illness from COVID-19*, available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> see also https://www.washingtonpost.com/health/new-cdc-data-on-underlying-health-conditions-in-coronavirus-patients-who-need-hospitalization-intensive-care/2020/03/31/0217f8d2-7375-11ea-85cb-8670579b863d_story.html

²⁶ See e.g. *Boston Children's Hospital Records*, Ex. 19 at 44, 49, 202; see also *Pretrial Services Report*.

²⁷ *E.g. id.* at 8, 13, 20, 52, 60, 137, 154.

²⁸ Jennifer Clopton, *Obesity New Risk Factor for Young COVID Patients* (April 29, 2020) <https://www.webmd.com/lung/news/20200429/obesity-new-risk-factors-for-young-covid-patients>; Dawn Fallik, *COVID-19 is Hitting Some Patients With Obesity Particularly Hard* (April 22, 2020), <https://www.sciencenews.org/article/coronavirus-covid19-obesity-risk-factor>

For the reasons stated herein and at the hearing on the motion, Mr. Calderon respectfully requests that the Court release him on conditions pursuant to 18 U.S.C. § 3142.

Respectfully Submitted,
ANGEL CALDERON
By his attorney:

/s/ David J. Grimaldi
David J. Grimaldi
David J. Grimaldi, P.C.
BBO No. 669343
929 Massachusetts Avenue, Suite 200
Cambridge, MA 02139
617-661-1529 (tel)
857-362-7889 (fax)
david@attorneygrimaldi.com

DATE: April 30, 2020

CERTIFICATE OF SERVICE

I, David J. Grimaldi, hereby certify that true copies of this filing were served on all registered participants via CM/ECF this 30th day of April, 2020.

/s/ David J. Grimaldi
David J. Grimaldi

LOCAL RULE 7.1(a)(2) CERTIFICATION

I, David J. Grimaldi, hereby certify that pursuant to Local Rule 7.1(a)(2), counsel for Defendant Angel Calderon conferred with counsel for the United States regarding the issues presented by this filing.

/s/ David J. Grimaldi
David J. Grimaldi